



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Mr. Kevin D. Pagan
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR96-2106

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102268.

The City of McAllen Police Department (the "department") received a request from a representative of the Texas Department of Health for an "intergovernmental transfer" of two department case files relating to two alleged sexual assaults. We note initially that a state governmental body may generally transfer information to another state governmental body without violating the confidentiality of the transferred information or waiving exceptions to disclosure, if the agency to which the information is transferred has the authority to obtain it.¹ Attorney General Opinions H-917 (1976); H-242 (1974); Open Records Decision Nos. 516 (1989), 272 (1981). Therefore, in addressing your request for a decision, we assume that you are not asking about an intergovernmental transfer of information but, rather, are asking whether the requested information may be excepted from required *public* disclosure under section 552.108 of the Government Code.

¹In Attorney General Opinion H-242 (1974) at 3-4, this office stated:

Our office has previously recognized the need to maintain an unrestricted flow of information between state agencies. See Attorney General Opinion M-713 (1970). The Open Records Act does not undercut that policy. Information which is not required to be disclosed to the public under the Act can still be transferred between state agencies without violating its confidentiality or destroying its confidential character.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Nevertheless, information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, when the information relates to a sexual assault or other sex-related offense, any information which either identifies or tends to identify the victim must be withheld under the common-law right of privacy and section 552.101 of the Government Code.² Thus, with the exception of any information which either identifies or tends to identify the victim of a sexual assault or other sex-related offense, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Section 552.108 provides that you may withhold the remaining information from disclosure, although you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

²Information is excepted from required public disclosure by a common-law right of privacy under section 552.101 if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), this office stated:

In our opinion, common law privacy permits the withholding of the *name* of every victim of a serious sexual offense. See Open Records Decision No. 205 (1978). The mere fact that a person has been the object of rape does, we believe, reveal "highly intimate or embarrassing facts" about the victim and, in our view, disclosure of this fact would be "highly objectionable to a person of ordinary sensibilities." Although there is certainly a strong public interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim.

under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 102268

Enclosures: Submitted documents

cc: Mr. Ed Matsis
Texas Department of Health
P.O. Box 141369
Austin, Texas 78714-1369
(w/o enclosures)